

Legal/legislative environment - summary

What	Who	Issue	Summary
Class Action Litigation	Castano	Alleges nicotine addiction	<p>On 2/17/95, Judge Jones issued his ruling partially granting plaintiffs' request for class certification on the following liability issues: fraud, breach of warranty (express or implied), intentional tort, negligence, strict liability, consumer protection and punitive damages. The issues which Judge Jones ruled were not appropriate for class certification were: injury-in-fact, proximate cause, reliance, affirmative defenses, compensatory damages and medical monitoring. Judge Jones rejected plaintiffs' definition of the class and determined that the class should include "all nicotine- dependent persons in the United States...who have purchased and smoked cigarettes manufactured by the defendants; the estates, representatives and administrators...the spouses, children, relatives and "significant others" of these nicotine-dependent cigarette smokers...." Judge Jones defined nicotine-dependent as "all cigarette smokers who have been diagnosed by a medical practitioner as nicotine-dependent; and/or all regular cigarette smokers who were or have been advised by a medical practitioner has had or will have an adverse health consequence who thereafter do not or have not quit smoking." PM plans to seek an appeal to the Fifth Circuit Court of Appeals.</p> <p>(Brown &amp; Williamson reportedly believes that the conditional certification of issues by the New Orleans court at the request of the plaintiffs is contrary to law. B&amp;W will seek to appeal the decision.)</p>
	Engle	Alleges nicotine addiction	<p>On 12/14/94, defendants filed their brief in support of their appeal to the Florida Third District Court of Appeal of the 10/31/94 order granting plaintiffs' motion for class certification. Plaintiffs' brief in opposition to the appeal is due on 2/23/95. On 1/2/95, the Florida Court of Appeal denied defendants' motion seeking certification of the October order to the Florida Supreme Court.</p>
	Broin	Flight attendants' ETS claims	<p>On 1/11/95, defendants noticed their appeal of Judge Kaye's 12/12/94 order granting class certification. Defendants' brief in support of their appeal is due on 3/13/95. On 1/9/95, plaintiffs filed their brief in opposition to defendants' appeal to the Florida Supreme Court from the 3/15/94 decision of the Florida Court of Appeals that reinstated plaintiffs' class action allegations.</p>

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<b>Court Cases</b>	Rogers	Smoking and Health	<p>Opening statements were presented by both sides on 2/2/95. Thereafter, plaintiff presented her case-in-chief. On 2/14/95, Judge Johnson entered judgment in favor of defendants and against plaintiff on plaintiff's claim for punitive damages, ruling that plaintiff had not submitted sufficient proof to establish her claim. On 2/15/95, plaintiff rested her case. Defendants then proceeded to offer their defense on 2/15-2/16 and rested their case at the close of the day on 2/16/95. On 2/21/95, closing statements were presented by both sides and the jury was given the case at approximately 2:00pm and deliberated until 4:30am. The jury returned at 11:30am on 2/22/95 and continued deliberations through 6:45pm at which time the jury advised they were at an impasse and Judge Johnson declared a mistrial.</p>
	PM-ABC	Libel	<p>On 1/31/95, PM completed production of documents that PM agreed to produce in response to defendants' first request for the production of documents. On 1/26/95, Judge Markow granted PM's motion to compel ABC to disclose the identities of its "confidential sources" by 2/5/95 and denied ABC's motion to quash subpoenas filed by PM against non-parties allowing PM to obtain identifying information in the hands of those non-parties. On 1/30/95, in response to ABC's emergency application, Judge Markow stayed his 1/26/95 order pending the submission of additional briefing documents by all parties and scheduled a hearing on the matter for 3/1/95.</p>
	Ramsey-Buckingham	ETS	<p>Plaintiff alleges she has lung cancer as a result of her exposure to environmental tobacco smoke. Plaintiff has filed a motion asking the court to convene trial prior to 9/5/95 due to her purported ill-health. Defendants have filed a motion in opposition and a case structuring conference was scheduled for 2/6/95.</p>
<b>Smoking Restrictions</b>	OSHA	US workplace smoking restrictions	<p>Hearings began 9/20. The focus of testimony now through March 9 will be on the impact of the proposal on businesses. RJR testified January 17 - 19; Steve Bayard of the EPA did not testify as scheduled.</p>
<b>State Medicaid Bill</b>	Massachusetts	A medicaid bill (Florida-type) was introduced in Massachusetts.	<p>The bill would authorize the, Attorney General to bring suit against cigarette manufacturers, and to retain the services of private counsel. It would take away the defenses of assumption risk, comparative and contributory negligence.</p>

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**State  
Medicaid  
Suits**

Florida

Medicaid Suit

On February 21, Florida filed suit under a law passed last year that allows it to go after third parties which are thought to be responsible for increased Medicaid costs. The lawsuit is based on an unconstitutional statute that was passed through the legislature in an unconstitutional manner, and is being brought by an illegal, independent agency. The law passed last year is a blatant attempt by the trial bar to ensure a multitude of future big-dollar suits against Florida businesses. The Medicaid Act attempts to stack the deck in favor of the State against anyone it chooses to sue under the statute, including for example the alcohol industry.

Philip Morris and RJ Reynolds Tobacco Company filed a petition with the Florida Supreme Court asking the Court to bar the Agency for Health Care Administration and the Department of Business and Professional Regulation from filing or maintaining the lawsuit.

(According to published reports, state Republicans and Democrats agree there are enough votes to repeal the law, but Gov. Chiles has vowed to veto any repeal attempt. It was unclear if there are the two-thirds votes necessary to override a veto.)

Mississippi

Medicaid Suit

Last May, the Mississippi Attorney General filed suit in chancery court, alleging that the tobacco companies should reimburse the state for Medicaid costs attributed to those who allegedly suffer from smoking related illnesses. The tobacco companies moved to dismiss that complaint and alternatively moved to transfer the lawsuit to circuit court, where the case could be tried by a jury. On February 21, Chancellor William Meyers, in a one page order, denied the defendants' motions and granted the plaintiff's motion to strike certain affirmative defenses. The defendants are considering whether to seek a clarification of the court's order and/or leave for an immediate appeal.

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## **Philip Morris**

### **- *Star Tobacco Corp.***

Philip Morris filed an unfair competition suit against Star Tobacco Corp. in federal district court in New York for wrongfully imitating Marlboro with its cowboy-themed marketing campaign for its Gunsmoke cigarette brand.

Philip Morris is asking a New York federal district court to prohibit Star Tobacco from selling or advertising Gunsmoke in any way that exploits the Marlboro image. Philip Morris seeks recovery of any profits made from the sale of Gunsmoke cigarettes and triple damages resulting from "such false advertising."

### **- *ABC Day One***

A judge originally ruled on Friday, Jan. 27, that ABC must reveal the identity of a confidential news source, "Deep Cough," only to rescind his ruling on Monday, Jan. 30. The judge granted ABC a second opportunity to forge arguments against his order. The order has been delayed until March 1 and the trial is scheduled for June 5.

R.J. Reynolds Tobacco Co. filed suit on February 22 over stories presented in ABC's "Day One" news magazine that claimed the tobacco industry manipulates the nicotine level in cigarettes in order to hook smokers. The claims in the suit are very similar to those filed by PM in our \$10 billion lawsuit against ABC. Trial is scheduled for June.

## **Reynolds Suggests OSHA Used Flawed Data**

In a recent OSHA hearing, RJR told the Labor Department that studies used to support its proposed ban on smoking in the workplace as a health hazard were flawed. A Reynolds scientist, Chris Coggin, told OSHA that the studies used the wrong test material and the concentrations involved were inappropriate. Coggin claims that instead of using environmental tobacco smoke (ETS), "most of the studies used fresh mainstream smoke, which is...very different from ETS." In addition, previous testimony revealed that the smoke concentrations used in some studies were "phenomenally high," and that studies "without major drawbacks were only considered in a cursory way by OSHA."

## **B&W's "Confidential" Documents Found in Public Library**

According to the Associated Press, copies of the controversial internal B&W documents have been available at the University of California at San Francisco medical library for the past several months. B&W contended that the documents were stolen by a former paralegal and was in the process of suing to keep the documents confidential.

B&W is seeking a delay in a Mississippi Circuit judge's order to turn over more than 4,000 pages of internal documents for his review in connection with the Butler court case.

The two parties agreed to leave the documents at the University in a sealed vault pending a March 17th hearing.

### **A.C. Nielsen Probed by Justice Department**

The U.S. Department of Justice asked A.C. Nielsen Co. for documents related to syndicated sales tracking services as part of an effort to evaluate the competitive nature of certain market behavior. Nielsen confirms that it is responding to the request.

### **Health Care Recovery Bill Introduced in California**

California state Sen. Diane Watson and Assemblyman Richard Katz introduced legislation that would allow the state and insurance companies to sue tobacco companies. The bill would remove a specific exemption which states that manufacturers can not be held liable for products that are thought to be inherently unsafe. State Attorney General Dan Lungren is said to favor an approach that adds a surcharge to cigarettes to cover health expenses.

### **Proposed Taxation**

#### ***- Introduced FET Legislation***

Sen. Mark Hatsfield (R-Ore.) and Sen. Bob Graham (D-Fla.) introduced legislation to increase the cigarette tax by \$1 per pack to finance reforms by Florida and Oregon in health care programs. Would also impose a floor stocks tax on both wholesalers and retailers, allowing only for a \$500 tax credit. Would take effect 1/1/96. The senators estimate the tax increase would provide around \$10 billion a year to help states implement reforms.

#### ***- Senator Kennedy Introduces Universal Health Care Bill***

Sen. Kennedy (D-MA) would establish a universal health care system cited as the "Affordable Health Care For All Americans Act." Would increase the cigarette excise tax by \$1.50 per pack (from 24¢ to \$1.74) to finance subsidies for low-income persons and small businesses.

#### ***- New York Excise Tax Recommendation***

The New York State Health Department is considering recommending drastically higher cigarette taxes and requiring antismoking signs in restaurants and other establishments where smoking remains legal. The recommendation would increase the state cigarette tax from 56 cents to \$1. The tax hike requires Governor Pataki's approval and the sign requirement would have to be approved by the Health Commissioner.

### **- Arizona SET**

The coalition that backed the 40 cent a pack tax in the November election defeated an attempt by Rep. Jeff Grosco, R-Mesa, to divert the proceeds of the tax to the state's general fund. The initiative passed in the November general election specified that 70% of the proceeds be set aside for indigent health care and the remainder for anti-smoking education, research into smoking-related illnesses and a prison construction fund. Republican legislative leaders opposed the measure on grounds it bypassed the Legislature and appropriated money directly to hospitals and other private interests.

### **- South Dakota Senate Rejects Proposed Cigarette Tax Increase**

The South Dakota Senate rejected by a 19-15 vote a measure that would have raised the state tax on cigarettes by 10¢ a pack, making it 33¢ a pack. In South Dakota, any tax increase must receive a two-thirds majority vote -- or 24 votes -- to pass. Although the bill was sponsored by Democrats, most Democratic senators voted against it.

### **Plaintiffs With Disability Argue for Smoking Restrictions**

In a Dallas federal court, Judge Barefoot Sanders denied the claim of two women who say that the Americans With Disabilities Act entitles them to a smoke free environment. Diane Emery, who has cystic fibrosis and Patricia Young, who has asthma, claim that the Caravan of Dreams nightclub in Fort Worth, Texas, by allowing smoking, prevented them from seeing performances. The Department of Justice refused to issue a policy on smoking when asked by Emery.

### **Local Ordinance in Woodbridge, IL**

Tough anti-tobacco provisions covering under-age tobacco sales enacted in Woodbridge, IL, in 1989 are credited with cutting teen smoking rates to a fraction of the national level. The law is considered model legislation throughout the United States. Both merchants and minors are held accountable. Retailers can be fined up to \$500 for the first offense and have their city-issued tobacco sale licenses suspended or revoked for repeat offenses. Moreover, a minor in possession of tobacco is handed a \$25 ticket and a \$50 ticket if caught purchasing the product. Each of the city's 35 tobacco merchants receives a visit from an undercover teenage decoy to evaluate proof-of-age practices.

### **Automatic Smoking Ban for Connecticut Prisons**

Any new prison that opens in Connecticut is automatically a smoke-free institution. A ban is currently enforced in 17 of the 27 state institutions. A spokesperson for the Department of Corrections commented that the department is dedicated to the concept and that the ban also acts to prevent cigarettes from being used as currency.

### **Dunkin Donuts Bans Smoking**

Dunkin Donuts banned smoking in all of its 3,000 outlets, which includes company-operated and franchise shops, effective June 1. The company has said that it will also ban smoking in its 600 outlets outside of the United States.

### **LAX Bars Ban Smoking**

The city of Los Angeles extended its 1993 ban on smoking in all terminals at Los Angeles International Airport to include airport bars. The remote international terminal lounge is the last remaining smoker-friendly area.

## **SMOKING CESSATION**

### **McNeil Relinquishes Rights**

McNeil Consumer Products Company, a division of Johnson & Johnson, relinquished all rights to LecTec's non-nicotine smoking cessation product which was undergoing clinical studies to determine its effectiveness. Results from the study are expected in March and, if the results are favorable, LecTec will immediately begin efforts to find a new marketing partner.

## **International Tobacco News**

### **Germany Accepts RJR's Eclipse**

The German Federal Ministry of Health has given RJR permission to import the Eclipse brand cigarette into Germany, although the product does not meet all the requirements of the German Food and Beverages Act. The product, subject to specific conditions, is being placed on the market for the purpose of conducting a market study. The exception to the Act limits the total quantity of the imported product to 400,000 pieces. The exception shall be applicable for the period until August 31, 1996; it can be revoked for due cause at any time before this period expires.

### **Legal Aid Given in U.K. Case**

Limited legal aid was granted by the Legal Aid Board for England and Wales to a reported two hundred people in the United Kingdom who claim to be suffering from smoking-related illnesses. This marks the first time that legal aid has been given to support a significant number of claims against the tobacco industry.

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The recipients, who qualify for aid because of low incomes, could be joined by other claimants in a multiparty action, which is similar to a U.S. class action. A lawyer for the plaintiffs said the main targets will include Philip Morris, Rothmans, American Brands' Gallaher Tobacco, and Hanson's Imperial Tobacco. The U.K. lawyers are planning a negligence claim, arguing that manufacturers failed to reduce or eliminate the alleged hazardous contents of cigarettes.

### **Cigarette Ad Ban Challenged in Australia**

Philip Morris will continue its legal action against the Australian federal government's ban on cigarette advertising. "Philip Morris protests the power of government to deny any group of Australians their right to communicate legitimate views on important social, public and commercial issues. In the case of the tobacco industry, this right continues to be substantially denied."

### **Privatization of SEITA**

The French government initiated its privatization program for 1995 by launching the sale of tobacco monopoly SEITA in late January.

### **La Moderna Cigarette Production in Vietnam**

Mexican cigarette producer and distributor Cigarrera La Moderna (CLM) reached an agreement to manufacture and distribute its Montana Cigarette brand in Vietnam, beginning in September 1995. The agreement calls for CLM to export all production materials, including tobacco, to Vietnam.

### **Fabric Developed in Japan to Fight Tobacco Odor**

Several Japanese firms have recently introduced synthetic textile products containing deodorants that absorb tobacco smoke. One company, Asahi Chemical Industry Inc., claims the fibers remove tobacco smoke odor in a small room within one to two hours. It is not yet known whether the fabric will be available worldwide.

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